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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

Arlie & Company,

Debtor.

Case No. 10-60244-aer11

RESPONSE TO DEBTOR'S MOTION FOR
DETERMINATION THAT PROPOSED
NONLOCAL BANKRUPTCY COUNSEL'S
FEES ARE CONSISTENT WITH LOCAL
RULE 2016-1(b)(4)

Hearing Date: October 20, 2010

Hearing Time: 11:00 a.m.

Hearing Location: Courtroom 5
405 East Eighth Avenue
Eugene, Oregon 97401

Umpqua Bank ("Umpqua"), hereby responds to Debtor's Motion for
Determination That Proposed Nonlocal Bankruptcy Counsel's Fees Are Consistent With Local
Rule 2016-1(b)(4) (Dkt. No. 274) (the "Motion") as follows:

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Counsel's Fees Are Consistent With Local Rule 2016-1(b)(4)

Debtor filed an application to employ Pachulski Stang Ziehl & Jones LLP ("Pachulski") as its new counsel (Dkt No. 273) (the "Application"). The lawyers of Pachulski listed in the Application are based in San Francisco and the Application shows that the billing rate for Pachulski's attorneys are \$650 an hour.

Local Rule of Bankruptcy Procedure Rule 2016-1(b)(4) provides:

"Local Counsel. If competent local counsel (i.e., an attorney where court hearings will regularly be scheduled in the case or adversary proceeding) is available, the court will allow compensation and expenses to nonlocal counsel in an amount not to exceed the total that would have been charged by competent local counsel. If an attorney wants a court determination before undertaking employment that comparable local counsel is not available, the court will consider and rule on an application before employment is actually undertaken."

The Motion does not ask for what this court could rule on under this Local Rule: that competent local counsel is not available. This is because there are multiple firms in this district that could represent the debtor including but not limited to debtor's proposed local counsel Ball Janik LLP, as well as Greene & Markley, PC, Sussman Shank, LLP, and Cable Huston Benedict Haagenon & Lloyd PC, just to name a few.

Instead, the Motion appears to request that the court preordain that the compensation and expenses that will be charged by Pachulski will not be inappropriate under this Local Rule. This request is premature and should not be determined at this time.

The arguments raised in the Motion also show that it is premature to rule on the Motion. In addition to footnote 3 in the Motion (suggesting that the Local Rule may be unenforceable), the arguments set forth in the Motion are (1) debtor will propose a full payoff plan and Pachulski's rates would therefore not have a negative impact on unsecured creditors in the case; (2) because Pachulski is becoming debtor's counsel nine months after the commencement of the case, its overall compensation will be substantially less than if it had been

hired at the beginning of the case; and (3) the rates charged by Pachulski are commensurate with applications filed by Perkins Coie.

Reasons 1 and 2 show why the Motion is premature. Even though distribution to unsecured creditors is not a factor to be considered for the application of Local Rule 2016-1(b)(4), it is unclear what will be proposed in the plan. In addition, at this stage we do not know how long it will take to confirm a plan, what steps will be taken to get to plan confirmation, and how efficient the administration of the case will be.

Pachulski's reliance on the rates of Perkins Coie in the Motion is somewhat misplaced because it does not indicate whether the rates are from out-of-state counsel or not and in only one of the cases noted were the fees actually approved. A review of the applications filed in the cases mentioned in the Motion show that even at Perkins there are a limited number of bankruptcy partners or counsel based in Oregon who bill greater than \$450 an hour (the principal office of the biller as described in Perkins Coie's website, www.perkinscoie.com, is in parenthesis):

In re Summit Accommodators, Inc., 08-37031. Although the court did authorize compensation requested, it does not appear that the application of the Local Rule was raised.

Jeannette L. Thomas, counsel \$430 (Portland)
Steven M. Hedberg, partner, \$570 (Portland)
Brian A. Jennings, partner \$450 (Seattle)
Michael C. Hall, partner, \$470 (Seattle)
Bryan S. Smith, partner, \$570 (Seattle)
Sarah J. Crooks, partner, \$415 (Portland)
Carl T. Crow, partner, \$610 (Seattle)
Douglas R. Pahl, partner, \$430 (Portland)
Richard E. Peterson, partner, \$675 (Chicago)
David F. Taylor, partner, \$550 (Seattle)
Andrew H. Solomon, counsel , \$375 (Portland)
George K. Fog, partner, \$570 (Portland)

In re Cascade Grain Products, LLC, 09-30508, the case was converted before the fees were approved.

Douglas R. Pahl, partner, \$430 (Portland)
Alan D. Smith, partner, \$550 (Portland)
Richard B. Archie, partner, \$560 (Portland; aircraft specialist)
Bruce G. McIntyre, partner, \$485 (Seattle)
John S. Rossiter, partner \$520 (San Francisco)
Brian A. Jennings, partner, \$450 (Seattle)
Paul G. Fortino, partner \$625 (Portland; litigation specialist)
George K. Fog, partner, \$570 (Portland)
Andrew H. Solomon, counsel, \$375 (Portland)
Jeannette L. Thomas, counsel, \$430 (Portland)

In re the Marshall Group, LLC, 08-45328. It does not appear that a fee application has been filed. However, the application for order authorizing retention of Perkins Coie as attorneys for the Official Committee of Unsecured Creditors (Dkt No. 229) shows the primary attorney being Jeanette Thomas at \$430 per hour with a range of billing rates from \$200 for junior associates to \$650 for the most experienced partners.

In re Pacific Lifestyle Homes, Inc., 08-45328, a case from the Western District of Washington.

Steven Hedberg, partner, \$590 (Portland)
Brian A. Jennings, partner, \$475 (Seattle)
Andrew H. Solomon, counsel, \$375 (Portland)

As you can see from the foregoing, even for Perkins Coie, billing rates for partners and counsel based out of Portland is rarely above \$450, and are not representative of rates generally charged by bankruptcy counsel based in Oregon.

The rates provided for in this case are representative of rates generally charged by experienced bankruptcy attorneys in Oregon:

Ball Janik: Brad T. Summers \$450, David W. Criswell \$425 (Dkt. No. 209)

Tonkon Torp: Albert Kennedy \$450, Michael Fletcher \$300 (Dkt No. 11)

Gleaves Swearingen Potter & Scott LLP: Douglas Schultz \$350 (Dkt No. 42)

The undersigned presently bills at \$400 an hour.

Another good representation of rates in the District of Oregon for attorneys in complicated bankruptcy cases is demonstrated in the Sunwest group of cases pending in the United States District Court for the District of Oregon in Eugene. Reviewing the docket in those cases, it appears that no lawyer had an approved at rate of over \$450 an hour. See, e.g., Security of Exchange Commission v. Sunwest Mgmt., Inc., U.S. District Court Case No. 09-6056 (Dkt Nos. 1047, 1048, 1050, 1053, 1117, 1120, 1122, 1210, 1229, 1230); In re Jon M. Harder, U.S. District Court Case No. 09-06074 (Dkt Nos. 1023, 1024, 1025, 1026, 1046, 1047, 1076, 1077, 1078, 1079, 1101); and In re Stayton SW Assisted Living, LLC, U.S. District Court Case No. 09-06082 (Dkt Nos. 1320, 1321, 1324, 1569, 1570, 1571, 1572, 1689, 1690, 1692).

From the foregoing, it would appear that \$450 per hour would be in the top end of rates for experienced bankruptcy counsel in this district. Nevertheless, the rates to be used by Pachulski is not the central issue: it is whether, at the end of the day, its overall compensation is reasonable. Accordingly, the Motion should be denied as premature.

Dated this 18th day of October, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of October, 2010, I electronically filed the Response to Debtor's Motion for Determination That Proposed Nonlocal Bankruptcy Counsel's Fees Are Consistent With Local Rule 2016-1(b)(4) with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to:

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Executed at Portland, Oregon, this 18th day of October, 2010.

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